

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 359 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

SATYADEV CHEMICAL LTD

Appearance:

MR M.J. THAKORE, for MR MANISH R BHATT for Petitioner
MR. D.A. MEHTA, R.K. PATEL & B.D. KARIA for
MR KC PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 09/12/96

ORAL JUDGEMENT (Per R.Balia,J.)

The Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred the following question of law arising out of its Cross Objection No. 15/Ahd/82 in I.T.A No. 2087/Ahd/81.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenditure of Rs. 23,323/- which was for the replacement of wooden trolleys by stainless steel trolleys was not in the nature of capital expenditure?"

The facts relevant for the consideration of the above case is that during the assessment year in question parts of wooden trolleys were replaced by stainless steel parts. He claimed the cost of such replacement of parts as deduction as revenue expenditure. It was also the case of the assessee that during the earlier years, while the entire trolley was being replaced, the Income Tax Officer has allowed such replacement as part of the Revenue expenditure. However, the ITO did not agree with the assessee and disallowed the claim for deduction by holding the expenses to be capital in nature. This finding though found favour with, the CIT (Appeals) was not accepted by the Tribunal and it allowed the expenses incurred on replacement of parts of wooden trolley as allowable expenditure. We may notice that without adverting to fact that only parts have been replaced during this year, and not the trolley itself, it has been referred to in the order of the Tribunal as replacement of trolleys, and there is no dispute about the correctness of the facts mentioned in the ITO's order. The reference to replacement of trolleys in the Tribunal's order appears to be an inadvertent error of description of the article replaced.

Whether in the given facts and circumstances of the case the replacement of a part of machinery would amount to revenue expenditure or capital expenditure is primarily a question of fact. We are satisfied that the Tribunal in arriving at this finding has correctly understood and applied the legal principle for determining the character of an expenditure to find whether it is revenue or to the facts of the present case.

We therefore answer question referred to us in the affirmative in favour of the assessee and against the Revenue. Reference stands disposed of accordingly with no order as to cost.
